

BEFORE THE TENNESSEE EMERGENCY COMMUNICATIONS BOARD

Nashville, Tennessee

June 9, 2004

**IN RE: RESOLUTION OF THE BOARD OF MAYOR AND ALDERMEN OF
MOUNTAIN CITY, TENNESSEE, REQUESTING REVIEW OF A DECISION OF
THE BOARD OF DIRECTORS OF THE JOHNSON COUNTY EMERGENCY
COMMUNICATIONS BOARD PURSUANT TO TENN. CODE ANN. § 7-86-312**

FINAL ORDER

This matter came before the Tennessee Emergency Communications Board ("Board" or "TECB") during a public meeting convened on May 27, 2004 to consider (1) a request for an increase to the emergency telephone service charge on landlines in Johnson County and (2) the March 3, 2004 request by Mountain City Mayor Harvey Burniston to place on the TECB agenda the matter of the resolution adopted by the Board of Mayor and Aldermen of the Town of Mountain City pursuant to Tenn. Code Ann. § 7-86-312 (attached hereto). The resolution, adopted on September 9, 2003, stated:

Be it resolved by the Board of Mayor and Aldermen of the Town of Mountain City, Tennessee:

That pursuant to T.C.A. 7-86-312, the Town of Mountain City, Tennessee requests the Tennessee Emergency Communications Board, Department of Commerce and Insurance, to review the decision of the Board of Directors of Johnson County ECD-911, adopted September 5, 2003, arbitrarily terminating 911 dispatch services and emergency communications services to the Town of Mountain City, Tennessee.

Background

This controversy arose from a dispute over the funding of the Johnson County Emergency Communications District. ("ECD").¹ A description of the underlying controversy and the Board's January 15, 2004 deliberations on this matter are memorialized in the *Interim Order* issued on March 31, 2004 (available on the TECB website: <http://www.state.tn.us/commerce/911>).

At the close of its January 15, 2004 deliberations, the Board ordered Johnson County ECD to continue to dispatch emergency calls for Mountain City and Johnson County until June 30, 2004. In addition, Mountain City was directed to continue its

appropriation to Johnson County ECD up to \$70,000, prorated for the fiscal year to June 30, 2004. Johnson County was directed to seek a rate increase from the TECB in sufficient time for the TECB to consider such request prior to June 15, 2004. The Board also directed Johnson County ECD and Mountain City to attempt to develop an interlocal agreement which addresses the composition of the ECD Board and a plan for financial appropriations. In that regard, the March 31 *Interim Order* specifically stated:

the parties are reminded of the Board's directive to take the initiative and attempt to find a solution to this matter by working together with the staff of the TECB to develop an interlocal agreement which addresses a plan for financial appropriations. **Compliance with this order requires the parties to negotiate together in good faith.** Staff is available, should the parties request their assistance. . . At the May 27, 2004 meeting, representatives of both parties shall be prepared to present evidence in the form of testimony or sworn affidavits of their good faith attempts to negotiate. Evidence of a successful resolution of this dispute is preferred. See Tenn. Code Ann. § 7-86-108(f) which states in pertinent part:

. . . Further, the board may also withhold such distribution [of the emergency telephone service charge] if it deems that the district is not taking sufficient actions or acting in good faith to establish, maintain or advance wireline or wireless E-911 service for the citizens of an emergency communications district.

On March 3, 2004, Mayor Burniston sent the above mentioned letter to the Board requesting that the Town of Mountain City and in particular that he, personally, be placed on agenda of the next Board meeting. The letter stated in pertinent part:

Apparently nothing was settled relative to the January 2004 meeting in which all parties attended. We have no resolution of the situation between the Town of Mountain City and the Johnson County E911 Comm. District or the funding situation with the fiscal year 04-05 budget rapidly approaching. Furthermore, to date, we have received nothing in writing from the State 911 Board relative to the January 2004 meeting.

In his response to this letter (attached hereto), Chairman Randy Porter stated in pertinent part:

The Board has directed you and the ECD Board to take the initiative and attempt to find a solution to this matter. Please keep staff apprized of your progress to that end. Please do not hesitate to contact the TECB staff for assistance in formulating an interlocal agreement that will resolve this matter.

On March 18, 2004, the TECB issued a Rural Dispatching Grant to the ECD in the amount of \$30,000 to assist in funding the ECD's dispatching payroll. The TECB

created this annual grant in 2003 to address the unique financial challenges facing rural ECDs, which, due to their lower populations have fewer landlines to provide funding.

On May 17, 2004, Johnson County ECD filed an application with the TECB seeking an increase from \$.65 to \$1.30 to its emergency telephone service charge on residential landlines. The request was placed on the agenda for the TECB's May 27, 2004 Board meeting. The Board specifically requested the attendance of Alderman Paul Gobble, who had purportedly proposed the \$63,696 decrease in Mountain City's budgeted contribution to the ECD for fiscal year 2003-2004 which spurred this controversy. On May 24, 2004, the ECD sent the Board a copy of a letter from Johnson County Mayor Dick Grayson which stated that the Johnson County Budget Committee had passed a resolution of intent to maintain the same funding level to the ECD for fiscal year 2004-2005 as had been provided in fiscal year 2003-2004, in the amount of \$84,043.

The May 27, 2004 Board Meeting

At the May 27th meeting, the Board considered the ECD's request for an increase to the emergency telephone service charge on landlines. The Board heard from TECB Auditor Don Johnson, Consultant Rex Hollaway, the ECD Director, Eugene Campbell, the ECD Chairman, Randy Stewart, the Johnson County Mayor and ECD Board Member, Dick Grayson, Mountain City Mayor and ECD Board Member Harvey Burniston, Vice Mayor Bob Morrison and Alderman Paul Gobble.

At the meeting, the ECD requested that the residential service charge on landlines be increased to \$1.30 to help fund operations, particularly salaries. Representatives of Mountain City expressed agreement with this request. The Board questioned the ECD's decision to limit the increase in the emergency telephone service charge to residential lines. ECD representatives posited that the County businesses were already under such economic stress that an increase was not appropriate.

During the discussion, the Board focused on the financial contributions that Mountain City and Johnson County provided to the ECD. Mr. Grayson reported that not only did the County contribute over \$84,000 to the ECD, but also housed the ECD for an annual rent of \$1.00 and provided for the utilities.

Alderman Gobble argued that Mountain City's contribution for fiscal year 2004-2005 should be no more than approximately \$25,000 based on either population or call volume. He asserted that Mountain City residents already paid for the ECD through their county taxes and should not be required to provide substantial additional funding to the ECD through city taxes. Mr. Gobble maintained that city residents constituted 14.3 % of the total county population and paid 18.45 % of county taxes. He argued that of the \$84,000 paid to the ECD by the county, city residents paid \$15,498. He reasoned that the total contribution to the ECD by city residents in fiscal year 2003-2004 was the sum of the \$60,000 Mountain City had contributed to the ECD and city residents' \$15,498 contribution to the county's payment to the ECD, or \$75,498. From this, Mr. Gobble extrapolated, by dividing the \$75,498 payment equally between 2,500 Mountain City

residents, that each Mountain City resident contributed \$30.20 to the ECD.² Mr. Gobble asserted that each of the 17,500 Johnson County residents contributed \$4.57.

After considering this argument, the Chairman asked the parties to look at the big picture, asserting that at this time dispatching and providing E-911 are two separate items, though in the future, they may not be.³ The Chairman pointed out that the emergency telephone service charge is not sufficient to fully fund any ECD and the General Assembly had not intended to make ECDs financially independent, but instead had encouraged intergovernmental support and cooperation. The Chairman stated that contributions from local governments are essential to the provision of E-911 service. The Board noted that Mountain City unequivocally could not provide its own dispatching service for the \$25,000 per year it was willing to contribute to the ECD.⁴

It was noted that Mr. Gobble's presentation reflected the classic philosophical conflict raised by city residents' payment of county taxes. It was suggested that city residents pay city taxes in order to receive better, more expeditious services than county residents.

Additional discussion focused on the fact that this dispute arose after Mountain City significantly reduced its contribution to the ECD.⁵ It was noted that raising the service charge solely to make up for a reduction in contributions by local government is contrary to TECB policy because allowing an increase in the service charge in response to a local government's reduction of its support to an ECD would only encourage other local governments to withdraw such support, which is contrary to public policy.⁶ The Board observed that the increase to the service charge would not have been necessary had Mountain City maintained its budgeted fiscal year 2003-2004 contribution.

After much discussion, a majority of the Board⁷ voted to increase the emergency telephone service charge from \$.65 to \$1.00 per month on residential classifications based upon Johnson County's agreement to contribute \$84,043 to the ECD and the requirement that Mountain City continue to fund the ECD at the same annual rate of \$60,000 rate in fiscal year 2004-2005 as it did in fiscal year 2003-2004. The Board imposed a caveat that the increase be subject to reconsideration should legislative changes to the state funding structure occur after completion of the TACIR study in 2006, and in any event, until a sunset date of June 30, 2007.

² This argument presupposes that all Mountain City residents pay the same amount in city taxes. If Mountain City taxes are based on property value as most cities' taxes are, this presupposition is erroneous. This argument also assumes that individuals pay the same amount in city taxes as businesses.

³ Simplistically, the situation is somewhat analogous to a person who does not own a car and wants to take a driving trip but is unwilling to pay for anything more than the cost of gasoline. At some point after the car and insurance are obtained, paying for no more than the gas involved in a trip might be feasible.

⁴ Nor has Mountain City requested that the Board allow it to create a new ECD within the Johnson County ECD. See Tenn. Code Ann. § 7-86-310.

⁵ It should be noted that Mountain City had budgeted \$88,696 as its contribution to the ECD for fiscal year 2003-2004, before the ECD moved to the County jail and this controversy arose.

⁶ See Tenn. Code Ann. § 7-86-105(b)(6).

⁷ Member Tom Beehan did not vote with the majority and Member David Purkey abstained from voting.

Findings and Conclusions

The Board is statutorily charged with the responsibility of “establishing 911 service throughout Tennessee.”⁸ This responsibility includes:

implementing statewide wireless enhanced 911 service pursuant to standards established by the board, which shall include the present and future costs associated with required and necessary implementation, operation, maintenance, and enhancement of statewide wireless enhanced 911 service pursuant to the federal communications commission order, in accordance with subdivision (d)(2) and § 7-86-306(a)(10);⁹

To accomplish this statutory purpose, the General Assembly authorized the Board’s involvement in matters related to districts’ financial standing and the level and quality of 911 service. Specifically, the Board may establish policies or plans to resolve disputes related to those matters between governmental entities and ECDs under Tenn. Code Ann. § 7-86-307(a)(2), which states in pertinent part:

With respect to an emergency communications district’s financial standing and the level and quality of 911 service, the board shall act as the deciding agency whenever such issues arise between an emergency communications district and other governmental units involving the 911 system . . .

Further, the General Assembly authorized the Board to intervene in disputes involving an ECD’s financial standing and the level and quality of 911 service at the request of local governmental entities under Tenn. Code Ann. § 7-86-312. As noted, this matter initially came before the Board pursuant to Tenn. Code Ann. § 7-86-312, which states:

Any city or county governing body may, by resolution, request the board to review a decision of the board of directors of the emergency communications district serving such city or county affecting its financial standing and its level or quality of 911 service.

The issue framed by the Board of Mayor and Aldermen of the Town of Mountain City, Tennessee involves the ECD’s financial standing and the level and quality of 911 service. While the issue raised by the Board of Mayor and Aldermen focused on the ECD’s decision to cease dispatching for Mountain City, the ECD’s decision was a direct response to the decision of the Board of Mayor and Aldermen to cut Mountain City’s longstanding contribution to the ECD in fiscal year 2003-2004 as follows:

⁸ Tenn. Code Ann. § 7-86-303(d)(3).

⁹ *Id.*

<u>YEAR</u>	<u>COUNTY</u>	<u>CITY</u>
1998-1999	\$84,170.00	\$76,291.00
1999-2000	\$46,115.00	\$74,938.00
2000-2001	\$37,440.00	\$74,800.00
2001-2002	\$42,000.00	\$68,497.00
2002-2003	\$61,500.00	\$63,100.00
2003-2004	\$84,043.00 ¹⁰	\$25,000.00 (budgeted) ¹¹

The issue raised by the Board of Mayor and Alderman, whether the ECD may cease dispatching to Mountain City residents, touches on Tenn. Code Ann. § 7-86-107(a). Subsection (a) requires district boards of directors to “create an emergency communications service designed to have the capability of utilizing at least one (1) of the following three (3) methods in response to emergency calls: (1) the direct dispatch method; (2) the relay method; or (3) the transfer method. Subsection (a) also mandates that “[t]he board of directors of the district shall elect the method which it determines to be the most feasible for the district.”

The guiding principle of statutory construction is to give effect to the legislative intent, which must be determined whenever possible from the plain language of the statute, “read in the context of the entire statute, without any forced or subtle construction which would extend or limit its meaning.”¹² The plain language of Tenn. Code Ann. § 7-86-107(a) refers, in the singular, to “the method [that] . . . is most feasible,” raising the question of whether the ECD is authorized to utilize a method for responding to emergency calls in one portion of a district that differs from the method the ECD determined was most feasible for the district as a whole.¹³ Public policy supports the position that district Boards of Directors do not have the discretion to apply differing methods throughout the ECD based upon the differing contributions of local government. Otherwise, ECDs might be positioned to discriminate in the choice of response method provided to communities in their district based on statutorily undefined grounds such as funding or other decisions made by their governmental representatives.

While financial contributions by local governments to ECDs may be a consideration in determining the feasibility of a response method, in enacting the Emergency Communications Act, the General Assembly focused more broadly on the “intent to provide a simplified means of securing emergency services which will result in

¹⁰ The ECD asserts that it actually received \$242,202.15 from the County during the 2003-2004 fiscal year, \$200,000 of which was for new equipment. Statement of ECD (January 13, 2004).

¹¹ Mountain City originally budgeted \$88,696, but this contribution was reduced to \$25,000 by the Board of Mayor and Aldermen in August 2003. At the January 15, 2004 meeting, the Board ordered Mountain City to pay \$70,000 pro rated. According to the ECD, as of June 25, 2004, Mountain City will have paid \$60,000 to the ECD for fiscal year 2003-2004.

¹² *National Gas Distribs. v. State*, 804 S.W.2d 66, 67 (Tenn.1991).

¹³ It should be noted that Tenn. Code Ann. § 7-86-107(b) provides that each public safety emergency services provider retains the right to dispatch its own services, unless a voluntary agreement is made between such provider and the board of directors of the emergency communications district.

saving of life, a reduction in the destruction of property, quicker apprehension of criminals and ultimately the saving of money.”¹⁴

Rather than specifically providing for districts to exercise their discretion by changing the method of responding to emergency calls in the face of a dispute with another governmental unit, the General Assembly contemplated that the TECB should be given the authority to resolve matters related to the financial standing and the level and quality of 911 service.¹⁵ Inasmuch as the General Assembly specifically directed the TECB to “act as the deciding agency” in disputes over financial matters and issues about the level of service, it follows that the TECB has the authority to direct a governmental unit seeking TECB involvement pursuant to Tenn. Code Ann. § 7-86-312 to maintain its funding level. As a practical matter, in this situation, the TECB had no other alternative. In essence, Mountain City’s resolution pursuant to Tenn. Code Ann. § 7-86-312 requested the TECB to force the ECD to provide continued dispatching, but exempt Mountain City from sufficiently funding it. The record shows that without Mountain City’s contribution, the ECD could not continue to provide full-time dispatching to the district as a whole, including the residents of Mountain City. The record does **not** show that Mountain City had taken steps to assure that its residents would continue to be provided with dispatching service had the Board authorized the ECD to select another method of responding to emergency calls from Mountain City. The record shows that Mountain City has not requested that it be permitted to form its own emergency communications district¹⁶ and, in any event, Mountain City does not appear to be in a position to provide dispatching to its residents in the immediate future. The TECB is charged with the responsibility of assuring that **all** citizens receive adequate emergency communications service, even in the face of differing opinions of local governmental entities.¹⁷ The TECB’s decision on this matter reflects its intent to satisfy that responsibility.

IT IS HEREBY ORDERED THAT:

- 1 Johnson County ECD shall continue to dispatch emergency calls for Mountain City;
2. Mountain City shall continue to fund the Johnson County ECD at the same rate for fiscal year 2004-2005 as for fiscal year 2003-2004, in the amount of \$60,000;
- 3 The emergency telephone service charge for residential-classification service users in Johnson County ECD shall be increased to \$1.00 per line until June 30,

¹⁴ Tenn. Code Ann. § 7-86-102(a). The rules of statutory construction teach that the meaning of a statute must be determined “not from specific words in a single sentence or section but from the act in its entirety in light of the general purpose of the legislation;” any interpretation should express the intent and purpose of the legislation. *National Gas Distrib., Inc. v. State*, 804 S.W.2d at 67; *Loflin v. Langsdon*, 813 S.W.2d 475, 478-79 (Tenn.Ct.App.1991).

¹⁵ See Tenn. Code Ann. §§ 7-86-307(a)(2); 7-86-312.

¹⁶ See Tenn. Code Ann. § 7-86-310 (requiring TECB approval before creating an ECD within an existing ECD).

¹⁷ See Tenn. Code Ann. § 7-86-303(d)(3).

2007. This decision shall be subject to reconsideration if legislative changes to the TECB funding structure occur after completion of the TACIR study in 2006.

This 9th day of June, 2004.

Randy Potter w/permission *hd*
Randy Potter, Chairman

Wanda Moody w/permission *hd*
Wanda Moody, Vice Chairman

* * * * *

Charles Bilbrey w/permission *hd*
Charles Bilbrey, Board Member

Ike Lowry w/permission *hd*
Ike Lowry, Board Member

Freddie Rich w/permission *hd*
Freddie Rich, Board Member

* * * * *

Shelby Sheffield w/permission *hd*
Shelby Sheffield, Esq., Board Member

Johnny Vickers w/permission *hd*
Johnny Vickers, Board Member

¹⁸ Mr. Beehan did not vote with the majority.

¹⁹ Mr. Purkey abstained on this vote.

HARVEY BURNISTON, SR.
Mayor
(423) 727-2940

TERRY G. REECE
City Recorder
(423) 727-2916



210 SOUTH CHURCH STREET
MOUNTAIN CITY, TENNESSEE 37683
TELEPHONE (423) 727-8005 • FAX (423) 727-2925

Aldermen
INA BELLAMY
PAUL GOBBLE
KEVIN PARSONS
BOB MORRISON

March 3, 2004

Mr. Anthony Haynes
Executive Director
TN Emergency Comm. Board
500 James Robertson Parkway
Fifth Floor
Nashville, TN 37243

Re: Request for April 2004 E911 State Board Meeting

Dear Mr. Haynes,

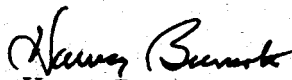
This letter is to request the Town of Mountain City and in particular Mayor Harvey Burniston to be on your April 2004 State E911 Board meeting agenda.

Apparently nothing was settled relative to the January 2004 meeting in which all parties attended. We have no resolution of the situation between the Town of Mountain City and the Johnson County E911 Comm. District or the funding situation with the fiscal year 04/05 budget rapidly approaching.

Furthermore, to date, we have received nothing in writing from State 911 Board relative to the January 2004 meeting.

Please call me at 423-727-2940.

Sincerely,


Harvey Burniston, Sr.
Mayor

HB/db

cc: Board of Mayor and Aldermen

Received by the

MAR 08 2004

TN Emergency
Communications Board



STATE OF TENNESSEE
TENNESSEE EMERGENCY COMMUNICATIONS BOARD
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY, FIFTH FLOOR
NASHVILLE, TENNESSEE 37243
615-253-2164/FAX: 615-253-2180

RANDY PORTER
CHAIRMAN

ANTHONY HAYNES
EXECUTIVE DIRECTOR

March 8, 2004

Harvey Burniston, Sr.
Mayor, Town of Mountain City
210 South Church Street
Mountain City, Tennessee 37683

Re: Your Correspondence of March 3, 2004

Dear Mayor Burniston,

Thank you for your letter of March 3, 2004. In your letter, you request that the Town of Mountain City and in particular that you, personally, be placed on the April 2004 agenda of the Emergency Communications Board ("Board" or "TECB"). We presume you are referring to the controversy arising from the resolution adopted by the Mayor and Aldermen of the Town of Mountain City seeking the Board's review pursuant to Tenn. Code Ann. § 7-86-312 of the decision of the Johnson County Emergency Communications District ("JCECD") to cease providing dispatching service to the Town of Mountain City. During the unscheduled visit you made to the offices of the Board several weeks ago, it was agreed that this matter would be placed on the next available agenda following the March meeting. The Board will request the attendance of all parties to this controversy at the meeting.

You further state:

Apparently nothing was settled relative to the January 2004 meeting in which all parties attended. We have no resolution of the situation between the Town of Mountain City and the Johnson County E911 Comm. District or the funding situation with the fiscal year 04-05 budget rapidly

approaching. Furthermore, to date, we have received nothing in writing from the State 911 Board relative to the January 2004 meeting.¹

To the contrary, at the close of the discussion on this controversy on January 15, 2004, the Board unanimously voted as follows:

- Johnson County ECD shall continue to dispatch emergency calls for Mountain City and Johnson County until the end of the fiscal year, on June 30, 2004;²
- Mountain City shall continue its appropriation to Johnson County ECD up to \$70,000, prorated for the fiscal year to June 30, 2004;
- Johnson County ECD and Mountain City will work together with the staff of the TECB to develop an interlocal agreement which addresses the composition of the ECD Board and a plan for financial appropriations;
Johnson County ECD will request a rate increase with proper documentation from the TECB in sufficient time for the TECB to consider such request prior to June 15, 2004;
- The ECD will continue to take calls from two (2) lines provided by Mountain City.

In addition, the City indicated a willingness to "look at two months of call volume, January's and February's, and try to work out an equitable settlement based upon that volume," as opposed to focusing solely on the ratio of population.³

As this matter continues toward its resolution, please be aware of the Board's policy on *Ex Parte* communications in proceedings pursuant to Tenn. Code Ann. § 7-86-312. TECB Policy No. 12 states in pertinent part:

- (i) Upon receipt by the Board of a resolution from a city or county governing body requesting the Board to review a decision of the board of directors of the emergency communications district serving such city or county pursuant to Tenn. Code Ann. § 7-86-312, Board members may not communicate, directly or indirectly, regarding any issue related to the decision under review, while the request for review is pending, with any person without providing notice and an opportunity to participate in the communication.

¹ We regret that you have not received a written order memorializing the discussion on January 15. The deliberations were lengthy and complicated and staff was not comfortable relying on memory. The court reporter just finished transcribing the meeting and did not provide us with a transcript until just a few days ago. The relevant portions of the transcript are attached hereto.

² Tenn. Code Ann. § 7-86-103 (10) states that emergency services include, but are not limited to "emergency fire protection, law enforcement, police protection, emergency medical services, poison control, animal control, suicide prevention and emergency rescue management."

³ See Transcript of January 15, 2004 Meeting of the TECB, pp. 86-87.

Notwithstanding subsection (i) Board members may communicate with Board staff on pending requests for review, members of the staff of the attorney general and reporter or a licensed attorney who has no interest in the decision being reviewed and agrees that the communication is privileged.

The Board has directed you and the ECD Board to take the initiative and attempt to find a solution to this matter. Please keep staff apprized of your progress to that end. Please do not hesitate to contact the TECB staff for assistance in formulating an interlocal agreement that will resolve this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randy Porter by A.L.A.", written in dark ink.

Randy Porter
Chairman

A handwritten signature in cursive script, appearing to read "Anthony Haynes", written in dark ink.

Anthony Haynes
Executive Director

Enclosure

cc/ Aldermen of the Town of Mountain City
George Wright, Esq.
Johnson County Mayor and Commissioners
Johnson County Sheriff
Members of the Johnson County ECD Board
Director, Johnson County ECD